Nos. 60, 61, 62, 80, 97, 111, 143, 144, 231

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

FEDERAL POWER COMMISSION, *Petitioner,*

v.

STANDARD OIL COMPANY OF TEXAS, A DIVISION OF CHEVRON OIL COMPANY, ET AL., *Respondent.*

On Writs of Certiorari to the United States Court of Appeals for the Tenth Circuit

ANSWERING BRIEF OF STANDARD OIL COMPANY OF TEXAS, RESPONDENT IN NO. 80

FRANCIS R. KIRKHAM
ROBERT H. MORRIS
225 Bush Street
San Francisco, California 94104

JUSTIN R. WOLF
DAVID B. WARD
LOUISE C. POWELL
1625 K Street, N. W.
Washington, D. C. 20006

CLAUDE PROCTOR
P. O. Box 1249
Houston, Texas 77001

Attorneys for Standard Oil Company of Texas, a Division of Chevron Oil Company

January 8, 1968

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 60, 61, 62, 80, 97, 111, 143, 144, 231

FEDERAL POWER COMMISSION, *Petitioner,*

v.

STANDARD OIL COMPANY OF TEXAS, A DIVISION OF CHEVRON OIL COMPANY, ET AL., *Respondent.*

On Writs of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

ANSWERING BRIEF OF STANDARD OIL COMPANY OF TEXAS, RESPONDENT IN NO. 80

In addition to the points made in the answering brief filed on behalf of Sunray DX Oil Company, et al., Standard Oil Company of Texas, a Division of

Chevron Oil Company (Standard), respectfully emphasizes the following:

In support of its contention that the Commission had power retroactively to change the rate authorized by the temporary certificates and to order refunds, the Commission quotes and relies upon the decisions of the District of Columbia and Fifth Circuits in *Skelly*[1] and *Continental*[2] (Commission's Brief, p. 45). However, the reasoning of the courts in those cases, as quoted by the Commission, is clearly erroneous. In each case, the court recognized that no specific provision of the Natural Gas Act permits retroactive reduction of a rate unconditionally authorized by a temporary certificate. Nevertheless, the courts implied the existence of such power from the general purposes of the Act.

As noted in the Commission's brief, each court said (329 F.2d at 249; 378 F.2d at 531):

> "* * * The basic purpose of the Natural Gas Act is consumer protection from unreasonable prices, and refund of excessive utility rates is a well recognized remedy. It would need to be quite clear from the Act that the Commission lacked the power to use such a remedy for the courts to deny it. We find no such clarity. * * *"

Thus, the courts *implied* a power to give rates retroactive application in the absence of "clear" statutory

[1] *Public Service Commission of N. Y.* v. *F.P.C.*, 329 F.2d 242 (1964), *certiorari denied sub nom. Prado Oil & Gas Co.* v. *F.P.C.*, 377 U.S. 963 (1964).

[2] *Continental Oil Company, et al.* v. *F.P.C.*, 378 F. 2d 510 (1967).

provisions expressly forbidding such action. This is directly contrary to the principle stated in this Court's decision in *T.W.A.* v. *Civil Aeronautics Board,* 336 U.S. 601 (1949), where this Court held that the power to make rates retroactive will never be implied.

In that case, the question was whether the Civil Aeronautics Board had authority to fix a new mail rate for air carriers and to make it retroactive for a period in which a rate previously fixed by the Board was in effect. The carriers relied upon the words of the governing statute, which empowered the Board to fix rates and "to make such rates effective from such date as it shall determine to be proper." This Court held that even this broad authorization could not be construed to permit the Board to make its new rates retroactive.

Such a construction, the Court held, would be "a radical break with tradition" in the field of rate making (336 U.S. 605). The Court said (336 U.S. 607):

> "In sum a construction which would make it possible to revise rates retroactively to any point of time would be a real innovation which should have a more solid basis than our own predilections. We cannot but feel that if the rate-making power were to be put to such a novel use, the purpose would have been made clear. It is too unprecedented a departure from the conventions of rate-making to rest on mere inference."

And see: *United States* v. *Seatrain Lines,* 329 U.S. 424 (1947); *American Trucking Ass'ns.* v. *Frisco Lines,* 358 U.S. 133 (1958).

CONCLUSION

For the reasons stated above and those stated in Standard's Opening Brief, we submit that the judgment of the Court of Appeals for the Tenth Circuit should be affirmed.

Respectfully submitted,

FRANCIS R. KIRKHAM
ROBERT H. MORRIS
225 Bush Street
San Francisco, California 94104

JUSTIN R. WOLF
DAVID B. WARD
LOUISE C. POWELL
1625 K Street, N. W.
Washington, D. C. 20006

CLAUDE PROCTOR
P. O. Box 1249
Houston, Texas 77001

Attorneys for Standard Oil Company of Texas, a Division of Chevron Oil Company

January 8, 1968